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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,229	03/19/2004	Heinz Focke	Q-80404	6072

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EXAMINER
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KASENGE, CHARLES R

ART UNIT	PAPER NUMBER
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2125

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/804,229	FOCKE ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Charles R. Kasenge	2125	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-9 is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20060717</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 5/12/06 have been fully considered but they are not persuasive. The Office reasserts that Focke et al U.S. Patent 6,516,811 implicitly discloses a performance-monitoring device with a performance-detecting device (col. 5, lines 28-39), a performance-specifying device (col. 3, lines 38-43), a comparator (col. 5, lines 50-61) and a performance-limiting device (col. 3, lines 62-67). In pg. 11 of Remarks, the Applicant claims that Focke '811's "specified quantities are in no way related to performance specifications, i.e., they do not influence the actual performance of the installation in any manner!". The Examiner interprets the amount of cigarettes produced to be a performance specification. The Examiner asserts that production yield is a performance specification and Focke '811 states, "the object of the invention is to control the, in particular, entire production and packaging system for cigarettes such that limited quantities --*desired quantities*-- can be produced without the production being associated with overly excessive production. (col. 1, lines 28-32)" This statement and col. 3, lines 38-46) clearly demonstrates that desired quantities do influence the actual performance of the installation.

In pg. 9 of Remarks, the Applicant defines the performance-limiting device as a device that "ensures that an activating signal is generated when the target value is exceeded... the device lowers (or reduce) the performance of individual production units or all production units." The Examiner asserts that Focke '811 teaches this exact function (col. 3, lines 62-67). Although Focke '811 doesn't explicitly disclose a performance-limiting device, it does teach performance limiting (col. 1, lines 28-32 and col. 3, lines 62-67) in which some sort of device would be

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required to perform the function. This concept applies to the comparator (col. 5, lines 50-61) and the performance-specifying device (col. 3, lines 38-43).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Focke et al. U.S. Patent 6,516,811. Regarding claim 1, Focke discloses a production and/or packaging installation for producing or packaging cigarettes, having a number of production units, namely a maker (10), packer (11), film-wrapping machine (12) and a multipacker (13) [Fig. 1], each production unit or all the production units being assigned a sensor system (56) provided for picking up performance data, characterized by a performance-monitoring device (50), which is provided for scaling the production or packaging performance level which can be retrieved by the installation, with a performance-detecting device (51) [col. 5, lines 28-39], a performance-specifying device (38) [col. 3, lines 38-43], a comparator (52) and a performance-limiting device (53), it being the case that the performance-specifying device (53) is provided for producing a performance-related desired value (54) with reference to the performance level which is guaranteed to an operator of the production and/or packaging installation with respect to the production or packaging performance level that can be retrieved by the installation, that the performance-detecting device (51) is provided for receiving performance data (55) from the sensor system

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(56) and for producing a performance-related actual value (57) with reference to the performance data (55), that the comparator (52) is provided for comparing the performance-related actual value (57) and performance-related desired value (54) [col. 6 and 7, lines 57-67 and 1-12] and, if the performance-related actual value (57) exceeds the performance-related desired value (54), for generating an activating signal (58) for the performance-limiting device (53), and that a performance-limiting device (53) is provided for reducing the performance level of individual production units or of all the production units [col. 3, lines 62-67 and col. 5, lines 50-61].

Regarding claims 2 and 3, Focke discloses a production and/or packaging installation according to claim 1, characterized by a control means (30) which is provided for controlling the production units [col. 3, lines 22-37], the performance-detecting device (51) being provided for receiving performance data (55) from the sensor system (56) and the control means (30) [col. 5, lines 28-39] or for evaluation of the performance data (55) from all the production units, namely, if appropriate, the cigarette-production machine (maker 10) and packaging machine (packer 11) and, if appropriate, the film-wrapping machine (12) and multipacker (13) [col. 6 and 7, lines 57-67 and 1-12]. Focke discloses a production and/or packaging installation according to claim 2, characterized in that the performance level of individual production units or of all the production units is reduced by virtue of the control means (30) being influenced, the control means (30) being provided for executing a control program, in accordance with which it is possible to activate the individual production units for carrying out a production or packing process by means of predeterminable output values at outputs (42) of the control means (30), the influencing of the control means (30) comprising the influencing of individual output values or outputs (42) [Fig. 2 and col. 3, lines 22-37 and 50-61].

Regarding claim 4, Focke discloses a production and/or packaging installation according to claim 3, characterized in that individual output values or outputs (42) are provided as digital or analog output values [Fig. 3] or outputs (42) for activating or deactivating individual actions at the production unit affected by the respective output value or output (42), and that the influencing of individual output values or outputs (42) comprises the activation or deactivation of these output values or outputs (42) which deviates from the activation or deactivation of these output values or outputs (42) by the control program [Fig. 3,6 and col. 5, lines 50-61].

***Allowable Subject Matter***

4. Claims 5-9 are allowed.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles R. Kasenge whose telephone number is 571 272-3743. The examiner can normally be reached on Monday through Friday, 8:30 - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard can be reached on 571 272-3749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to be 'CK' followed by a stylized flourish.

CK  
July 18, 2006